

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3876 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALARAKHA @ BHURIYO ABDULMIYA DIWAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR AS DAVE with MS DR KACHHAVAH for Petitioner
MR KC SHAH, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu Alarakha Bhuriyo Abdulmiya Diwan has brought under challenge the detention order dated 29th March 1996 rendered by the first respondent under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been appear at annexure : B to the petition. They inter alia indicate that the detenu Taiyebbhaji Hajibhai Sandhi has been carrying on criminal and anti-social activities of causing hurt to innocent people with the aid of deadly weapons nand creating atmosphere of fear and following offences have been registered in the Varachha Police Station, Surat :

1. CR No.398/95 U/ss. 147, 148, 149, 452, 323, 504, 506(2) and 427 of I.P.C. and Section 135 of the Bombay Police Act. The matter is pending for trial.

2. CR No.400/95 U/ss.147, 148, 149, 326, 323, 506(2) of I.P.Code r/w Sec.135 of the Bombay Police Act. The matter is pending for trial.

The last offence is stated to have occured on 10th October 1995 and the petitioner was enlarged on bail.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about the incidents of threatening and assaulting the witnesses with deadly weapons and extorting money from them.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activties which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. P. 1268.

In that case also 5 cases were referred to in the grounds of detention. They were under Chapter XVI of the Indian Penal Code along with the provisions of the Arms Act. Two incidents were quoted from the cases which were referred to in the detention order. The same have been set out in Paras : 11 and 12 of the citation. They may be reproduced for the purpose of comparison of the incidents in question :

"This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10.8.1994 at 4.00 p.m. and on 12.8.1994 at 7.00 p.m. In the incident dated 10.8.1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12.8.1994 at about 7.00 p.m. the detenu-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tampo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tampo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12.8.1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the

allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appears to have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10.8.1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10.8.1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences as contemplated in Sec.2(c) of the Act because the expression 'habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec.25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained."

6. Mr.K.C.Shah, learned A.G.P. for the State has in reply referred to an earlier decision of the Apex Court in the case of Mrs.Harpreet Kaur Harvinder Singh Bedi V. State of Maharashtra & Anr., reported in AIR 1992 SC 979. On comparing the facts in this case with the facts in the

above mentioned decisions of the Apex court it clearly appears that the facts of this case more resemble the facts in decision in the case of Mustakmiya Jabbarmiya shaikh V/s. M.M.Mehta, C.P. (Supra). As a matter of fact, it will be noticed from the two incidents which are quoted from the statements of the witnesses that the concerned witnesses were assaulted in respect of their individual acts for which there is no complaint or F.I.R. lodged. In the facts of the present case, therefore, the decision of Harpreet Kaur's case would not be applicable. Relying upon the decision in Mustakmiya's case (Supra).

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision in Mustakmiya's case (Supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner detenu - Alarakha @ Buriyo Abdulmiya Diwan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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